Filed 12/9/15 Broadway v. Myers Towing CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JUSTIN CORDELL BROADWAY, Plaintiff and Appellant, v. MYERS TOWING Defendant and Respondent.	A141802 (Alameda County Super. Ct. No. HG12630213)

Plaintiff and appellant Justin Cordell Broadway brought this action after his car was towed and impounded for having an expired registration. In the operative complaint, he contended defendant Myers Towing (Myers) acted improperly in towing his car. Myers cross-complained, seeking the costs of towing and storage. After a bench trial, the trial court ruled against Broadway and in favor of Myers on all causes of action. We shall affirm the judgment.

I. BACKGROUND

Preliminarily, we note that Broadway has not provided a properly supported statement of facts in his opening brief. The California Rules of Court require that litigants provide a summary of significant facts supported by references to the appellate record. (Cal. Rules of Court, rule 8.204(a)(1)(C) & (2)(C); *Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 628 (*Cassidy*) [appellate court disregards assertions and arguments that lack record references]; *Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839, 846 [court may disregard factual assertions that lack record references].) Broadway's status as a pro. per. litigant does not

excuse him from the duty to comply with these rules. An appellant in propria persona is held to the same standard of conduct as that of an attorney on appeal. (*Cassidy*, 220 Cal.App.4th at p. 628.)

Broadway's statement of facts is replete with assertions that lack citations to the record. In addition, he appears to violate the rule that an appellant must fairly set forth all the significant facts, not just those beneficial to him. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Finally, his brief is almost entirely devoid of reasoned argument and citations to authority. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [court may treat points not supported with cogent argument and authority as waived].) Although Broadway's brief fails to comply with these rules, in the interest of justice, we shall consider the merits of the appeal to the extent possible based on the briefs and the record before us.

Trial exhibits included in the record on appeal reveal the following: Myers has a contract with the City of Hayward to remove vehicles at the direction of the Hayward Police Department. According to a police report, on March 22, 2012, a police officer saw Broadway's car parked on a public street. It lacked license plates. A Department of Motor Vehicles (DMV) records check showed the registration had been expired for more than six months. Myers towed the car; in the vehicle report, the officer noted the removal was authorized by Vehicle Code[1] section 22651, subdivision (o), which authorizes towing when a vehicle is found on a highway with a registration that has expired more than six months previously. The police department authorized Myers to release only the property in the vehicle, but not the vehicle itself, which Myers retained.

The exhibits included a DMV form, apparently dated September 16, 2011, indicating Broadway had paid $243 of the $311 he owed for registration, that he still owed another $68 for use tax, and that a smog inspection and certification were required. The document stated: "CURR EXP DATE: 12/10/10," and "NEW EXP DATE:

[1] All statutory references are to the Vehicle Code.

12/10/11." It also stated: "* INCOMPLETE APPLICATION ** SEE ABOVE ** THIS IS NOT AN OPERATING PERMIT *"

Broadway brought this action against the Hayward Police Department and Myers. In his second amended complaint, Broadway alleged the police department and Myers were negligent in failing to check the correct registration date and in failing to warn him before impounding the car, and that Myers intentionally removed the car before he could return home. The trial court sustained the City of Hayward's demurrer to the second amended complaint without leave to amend and dismissed it from the action with prejudice. Myers was the sole remaining defendant.

Myers cross-complained against Broadway, seeking compensation for towing costs, storage, and the cost of a lien sale that was planned but not conducted. Myers sought $2,450 as of April 27, 2012, plus storage costs of $60 per day thereafter. It appears that Broadway initially failed to answer the cross-complaint, and a default judgment was entered against him. In January 2014, the trial court granted Broadway's motion to set aside the default and allowed him to file an answer.

A trial took place before a judge. There was no court reporter, and accordingly the record does not include a transcript of the trial proceedings. The trial court issued a decision in favor of Myers.

According to the decision, Broadway had taken the position that his registration was valid through December 10, 2011, and that he still fell within the six-month window of section 22651, subdivision (o). The court did not accept this contention, instead finding: "Plaintiff testified that he had gone to DMV and paid $243.00 to have the car transferred into his name and that he obtained a new registration date. However, in order to obtain current registration stickers for the vehicle, the court notes that Plaintiff still needed to pay DMV a balance of $68.00, which he did not pay. Therefore, the court finds that the testimony of Plaintiff at trial that his registration was incomplete on March 22, 2012, the date the vehicle was towed, was an admission." The court also noted that the DMV form stated in bold print and upper case letters that the application

was incomplete, that it was not an operating permit, that a smog inspection and certification were required, and that an additional fee of $68 was due.

The court noted that a representative of Myers had testified that Myers did not have access to DMV records and could not verify independently whether or not a vehicle was registered with the DMV. Myers relied on police officers' judgment that a vehicle should be towed. When an officer made that determination, a dispatch was sent to Myers, which had 20 minutes to respond; Myers would pick up the vehicle and paperwork, take the vehicle to its tow yard, and store it. The court found that "per the contract between HPD and Myers Towing, Myers Towing has no authority to initiate tows at will. The police generated tows are pursuant to the direction of the HPD." The police department set the rates for storing vehicles.

Based on the evidence, the trial court found Broadway had not shown Myers was negligent in any way. The court also concluded that Broadway's testimony and the documentary evidence supported a finding that his vehicle registration had not been completed at the time the police department directed Myers to remove the vehicle from the street. The court therefore ordered judgment in Myers's favor on Broadway's complaint.

The court also ruled in favor of Myers on its cross-complaint, finding Myers was not required to warn Broadway before towing his vehicle and that under its contract with the police department, it was entitled to charge for towing and storage. The court entered judgment in Myers's favor in the amount of $2,450.

II. DISCUSSION

A. Absence of Reporter's Transcript

We first note that the record before us consists exclusively of an Appellant's Appendix and a Respondent's Appendix, and that Broadway has not provided a reporter's transcript. In the circumstances, "we must treat this as an appeal 'on the judgment roll.' [Citations.]" (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.) The trial court's findings of fact are "presumed to be supported by substantial evidence and are binding upon us, unless the judgment is not supported by the findings or reversible

error appears on the face of the record." (*Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207 (*Krueger*); see *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521–522.)

Broadway makes the brief, unsupported contention that the trial court erred when it did not assign a court reporter to the case. There is no indication, however, that he ever requested a court reporter pursuant to the Alameda County local rules.[2] Nor is there any indication he brought the matter to the trial court's attention in any other way. We do not consider issues not raised in the trial court. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486.)

B. Broadway's Substantive Contentions

Broadway contends his car was not subject to towing pursuant to section 22651, subdivision (o)[3] because the registration had expired less than six months previously. The trial court found otherwise. In effect, this is a challenge to the sufficiency of the evidence to support that finding. As a general rule, in considering such a challenge, we "consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the judgment. [Citations.]" (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630.) As we have explained, however, in the absence of a transcript of the proceedings in the trial court, we conclusively presume the findings are supported by the evidence. We also note that the trial court expressly relied on the DMV form that states on its face that the car was currently registered through December 10, 2010 (more than a year before Broadway's car was impounded) and that the new registration of the car—through

[2] Rule 3.95 of the Local Rules of the Superior Court of Alameda County provides: "Except as otherwise provide by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

[3] Section 22651, subdivision (o)(1)(A), authorizes a peace officer to remove a vehicle when it "is found or operated upon a highway, public land, or an offstreet parking facility . . . [¶] . . . [w]ith a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility."

December 10, 2011—was incomplete. On this record, we must reject Broadway's challenge to the trial court's factual finding.

Broadway also appears to take the position his car was parked on private property and that Myers violated section 22658, which governs the circumstances under which an owner of private property may remove a vehicle parked on the property and provides for liability in certain circumstances if the vehicle is removed improperly. This contention is meritless. Not only are we required to presume the judgment is supported by substantial evidence (*Krueger, supra,* 145 Cal.App.3d at p. 207), but Broadway points to no evidence in the record indicating the car was parked on private property.[4]

Broadway asserts his civil rights were violated by the search and seizure of his car and that he is entitled to compensation for the violation. His complaint does not include a cause of action for violation of his civil rights, and the matter is therefore not before us. (See *Cassidy, supra,* 220 Cal.App.4th at p. 628.) Moreover, he provides no reasoned argument or citation to authority to support this contention, and we treat it as waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.)

We also reject Broadway's perfunctory contention that the trial court "did not rule on several contested issues," which he makes without identifying the issues or pointing us to any portion of the record. (*Cassidy, supra,* 220 Cal.App.4th at p. 628 [appellate court disregards arguments that lack record references].)

Broadway states that Myers's cross-complaint had been "vacated" before trial. This statement appears to refer to the fact that the trial court set aside Broadway's default on the cross-complaint. Broadway has not shown the trial court erred in making findings and entering judgment on the cross-complaint.

Finally, Broadway contends defendants continued their tortious conduct by towing his current car, a different car than that at issue in this case. This matter was not before the trial court and we do not consider it here. (*Cassidy, supra,* 220 Cal.App.4th at p. 628.)

---

[4] As we have noted, the police report stated the car was parked on a public street.

III. DISPOSITION

The judgment is affirmed.

_____
Rivera, J.

We concur:

_____
Ruvolo, P.J.

_____
Streeter, J.

A141802